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Stephen B. Salai
Harter, Secrest & Emery LLP
700 Midtown Tower
Rochester, NY 14604

In re Application of
Vozhdaev, Yevgeny, et al.
Application No.: 09/720,494
PCT No.: PCT/EP99/03632
Int. Filing Date: 26 May 1999
Priority Date: 26 May 1998
Docket No.: 87528.000002
For: PITOT-STATIC TUBE

*Renewed Petition:**3/4/02*

DECISION
ON PETITION UNDER
37 CFR 1.10(c)

This decision is in response to applicants' "Response to Notice of Abandonment" filed 26 February 2001. This is treated as a petition under 37 CFR 1.10(c). No petition fee is required. Petition is **DISMISSED**.

BACKGROUND

On 26 May 1999, applicants filed international application PCT/EP99/03632, which claimed a priority date of 26 May 1998. A copy of the international application was transmitted to the United State Patent and Trademark Office from the International Bureau (IB) on 02 December 1999. On 19 November 1999, applicants filed a demand for International Preliminary Examination, in which the United States was elected. Accordingly, the thirty month period for paying the basic national fee expired at midnight on 26 November 2000.

On 29 December 2000, applicants filed a transmittal letter for entry into the national stage in the United States, accompanied by, *inter alia*, the basic national fee and a preliminary amendment.

On 02 February 2001, the United State Designated /Elected Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the applicants failed to provide the full U.S. Basic National Fee by thirty months.

On 26 February 2001, applicants filed the instant Response to Notice of Abandonment accompanied by, *inter alia*, a transmittal letter with Express Mail label EL603845135US affixed and two pages of printouts from the United States Postal Service (USPS) website showing the delivery history of the package with the earlier mentioned Express Mail label.

DISCUSSION

In the instant petition, applicants request that the filing date of application No. 09/720,494 be amended to 24 November 2000. The requirements for a petition to correct a filing date based

on Express Mail records are set forth in 37 CFR 1.10(c). The section states as follows:

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Element (1) has been met. The petition was filed within a month of mailing of the Notification of Abandonment.

Element (3) has not been met. Applicants have not provided a copy of the original Express Mail label, showing the "date-in." Applicants have provided printouts of the USPS web page showing the transportation record of the package marked with Express Mail label number EL603845135US, but 37 CFR 1.10(c)(3) requires the Express Mail mailing label showing the "date in."

Element (2) has not been met. The Express Mail label number must be placed on the correspondence before it is mailed to the Office. The correspondence in the file does not have the Express Mail label number noted on it. Specifically, the transmittal letter sent to the Office, marked in on 29 December 2000, does not have an Express Mail label number noted on it. The transmittal letter "copy" that accompanied this petition has a mailing label affixed, but as that number is not reflected on the transmittal letter in the file, it clearly was not affixed prior to the original mailing as required by 37 CFR 1.10(c)(2). "[R]elief will not be granted on petition under 37 CFR 1.10(c) through (e), even if the party who filed the correspondence satisfies the other requirements of 37 CFR 1.10(c), 1.10(d) or 1.10(e)," "if the number of the mailing label did not appear on the correspondence as originally filed." MPEP § 513.

"Since the filing of correspondence under 37 CFR 1.10 without the number of the 'Express Mail' label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." MPEP § 513.

Accordingly, issuance of a Notification of Abandonment (Form PCT/DO/EO/909) was appropriate. Applicants may wish to consider filing of a petition under 37 CFR 1.137(b).

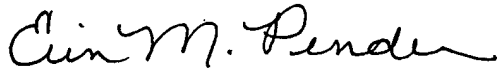
CONCLUSION

For the reasons listed above, applicants' petition under 37 CFR 1.10(c) to correct the filing date is **DISMISSED** without prejudice.

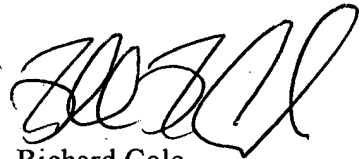
The application remains abandoned.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(c)."

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Erin M. Pender
Attorney Advisor
PCT Legal Administration



Richard Cole
PCT Legal Examiner
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459